

**BEFORE THE
STATE OF NEW JERSEY
BOARD OF PUBLIC UTILITIES
OFFICE OF ADMINISTRATIVE LAW**

In the Matter of the Filing by	:	BPU Docket No. TR97040228
Bell Atlantic-New Jersey, Inc. For	:	OAL Docket No. PUCOT 05760-997N
Revisions to Tariff B.P.U. No. 2,	:	
Access Service Providing for Rates	:	
and Charges in Connection with	:	
the Provision of	:	
IntraLATA Presubscription	:	
	:	

BEFORE: HONORABLE MUMTAZ BARI-BROWN
 Administrative Law Judge

INITIAL BRIEF OF THE
NEW JERSEY DIVISION OF THE RATEPAYER ADVOCATE

**This Document Has Been Redacted of Information That
Bell Atlantic-New Jersey Considers Proprietary and Confidential**

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INTRODUCTION

On December 14, 1995, the New Jersey Board of Public Utilities (“Board”) issued an *Order Approving Presubscription and Proposal for Rules* (“*Presubscription Order*”).¹ In the *Presubscription Order*, the Board found, among other things, that (1) access code [dial-around] competition is not sufficient and effective competition; and (2) IntraLATA toll presubscription is in the public interest and shall be the policy of the State.² The Board subsequently adopted regulations authorizing full statewide implementation of intraLATA presubscription by May 5, 1997.³ N.J.A.C. 14-10-10.4(a) promulgated by the Board requires that Bell Atlantic - New Jersey, Inc. (“BA-NJ”) recover 70 percent of the cost of implementing intraLATA toll presubscription from interexchange carriers (“IXCs”). This rule section also specifies that the total costs are to be recovered over a five year period, beginning with the commencement date of presubscription, through an equal access recovery charge (“EARC”) assessed on IXCs based upon total intrastate interLATA and intraLATA toll minutes of use (“MOU”) for their portion of the total costs and on the local exchange carriers (“LECs”) based upon their intrastate toll MOUs for their portion of the total costs. The rule also establishes that only the direct, incremental costs associated with implementing presubscription are recoverable through the EARC, with no costs included that would have been incurred without its implementation. Such direct costs include, but are not limited to, switch software, translation costs, and costs to modify customer service and customer records and business office practices to accommodate presubscription. N.J.A.C. 14:10-10.4(b).

¹ *Order Approving Presubscription and Proposal for Rules, I/M/O/ the Investigation of IntraLATA Toll Competition for Telecommunications Services on a Presubscription Basis*, BPU Docket No. TX94090388 (December 14, 1995) (“*Presubscription Order*”)

² *Id* at 39.

³ See N.J.A.C. 14:10-10.1 et seq., IntraLATA Competition on a Presubscription Basis and N.J.A.C. 14:10-10.3(a).

On April 3, 1997, BA-NJ filed a petition seeking to revise its Access Tariff providing for the rates and charges in connection with the provision of intraLATA presubscription. BA-NJ requested that such tariff be interim if the Board was unable to provide final approval by May 5, 1997. On May 22, 1997, the Board approved the tariff as an interim tariff subject to true-up and refund, issued its *Order of Interim Approval*, and directed the institution of a proceeding to determine the appropriate rates, terms and conditions, primary interexchange carrier (“PIC”) charges, and EARC charge on a permanent basis.⁴ In the *Order of Interim Approval*, the Board directed that the matter be transmitted to the Office of Administrative Law (“OAL”) for hearings.

On June 23, 1997, the OAL mailed a notice of filing to the parties that Docket No. TR97040228 was transmitted from the Board and assigned OAL Docket No. PUCOT 05760-97N as of June 12, 1997, and designated the Honorable Bari-Brown as the Administrative Law Judge (“ALJ”) for this matter. On August 26, 1997, Judge Mumtaz Bari-Brown issued a Notice of Prehearing Conference to be held on October 2, 1997 at the OAL’s Newark office. The Prehearing Conference was subsequently changed to October 24, 1997 by notice dated September 29, 1997. On November 18, 1997, Judge Bari-Brown issued a Prehearing Order in this matter. The Prehearing Order identified the following five issues to be resolved:

- (1) The appropriate rates, terms and conditions for the EARC Charge.
- (2) Whether the \$5.00 PIC charge is appropriate.
- (3) Whether the unauthorized PIC change charge of \$35.00 is appropriate.

⁴ I/M/O/ the Filing by Bell Atlantic - New Jersey, Inc. For Revisions to Tariff B. P. U. No. 2 Access Services Providing for Rates and Charges in Connection With The Provisions of IntraLATA Presubscription, Docket No. TR97040228 (May 22, 1997)(“*Order of Interim Approval*”).

(4) Whether the PIC Guaranteed Satisfaction charge of \$5.00 is appropriate.

(5) Whether the PIC Switchback charge of \$7.59 is appropriate.

The Prehearing Order also established a schedule for discovery and filing of prefiled testimony.⁵

The Prehearing Order established that BA-NJ has to carry the burden of proof and would proceed first.⁶

On June 8, 1998 the parties submitted a stipulation of fact (“Stipulation”) to the ALJ. That Stipulation provided:

- (1) The current interim Equal Access Recovery Charge (“EARC”) being assessed on interexchange carriers (“IXCs”) in New Jersey is \$.0000545 per IXC per minute of use (mou). The rate is based upon an estimate of annual costs recoverable from IXCs of \$4,385,140 and annual IXC mou of 8.042 billion. This estimate of costs was prepared by BA-NJ prior to its initial tariff filing in April 1997.
- (2) A subsequent BA-NJ cost study contains an estimate of annual costs recoverable from IXCs of \$2,659,102 and annual IXC mou of 7.375 billion. This would produce an EARC of \$.0000361.

⁵ That schedule was: November 21, 1997, all initial discovery served; December 31, 1997, all responses to initial discovery due; January 26, 1998, BA-NJ shall submit prefiled testimony; February 9, 1998, AT&T, MCI, Ratepayer Advocate and Board Staff shall serve discovery on BA-NJ’s prefiled testimony; March 9, 1998, BA-NJ shall respond to discovery; March 30, 1997, AT&T, MCI, Ratepayer Advocate, and Board Staff shall submit prefiled testimony; April 20, 1998, the parties shall serve discovery on prefiled testimony of AT&T, MCI, Ratepayer Advocate, and Board Staff; May 11, 1998, answers due on discovery served in April; May 20, 1998, all rebuttal testimony filed; and June 1, 1998, BA-NJ surrebuttal testimony shall be filed. Hearings were scheduled in this case for June 10, 11, 12, and 22 at the OAL’s office in Newark.

⁶ Judge Bari-Brown during the course of this proceeding granted various *pro hac vice* motions from the parties in this proceeding.

- (3) BA-NJ anticipates completing an educational call study analysis in June 1998. BA-NJ anticipates filing its first annual update to the EARC shortly thereafter.

On June 10, 1998 hearings were commenced with BA-NJ calling its first witness, Mr. West. Mr. West's prefiled testimony and rebuttal testimony with minor changes was offered and accepted into evidence.⁷ On June 11, 1998, the hearings continued with BA-NJ calling Mr. Pehta as its second witness. Mr. Pehta's prefiled testimony and rebuttal testimony were offered and accepted into evidence. AT&T commenced cross examination of Pehta.

During the cross examination of Mr. Pehta by AT&T, the parties and the Honorable Mumtaz Bari-Brown agreed upon a recess to discuss suspension of the proceeding for the purpose of developing a full and complete record. Specifically, the parties wanted to suspend the proceedings until BA-NJ completed all of its studies and updated them accordingly. The parties discussed lowering the EARC rate from \$.000545 to \$.000361. Counsel for BA-NJ indicated he would approach his client and recommend the reduction.⁸ BA-NJ agreed to provide updated cost data by July 31, 1998.

⁷ Mr. West noted one change on page 10 of his prefiled direct testimony. The rate for unauthorized PIC was reduced to \$30.00 from the initial interim rate of \$35.00. See June 10 Transcript at page 8.

⁸ BA-NJ agreed to lower the rate and filed a petition with the Board and the Board approved the lowering of the rate.

The hearing was suspended and a revised schedule was finalized on August 5, 1998.⁹ On October 5, 1998, the Ratepayer Advocate filed the initial testimony of Joseph Longo in this proceeding. On October 26, 1998, MCI filed the rebuttal testimony of Don A. Laub.¹⁰ On November 20, 1998, BA-NJ filed supplemental rebuttal testimony of John A. Pehta in response to the testimony filed by the Ratepayer Advocate. On November 23, 1998, AT&T filed the direct testimony of James Dionne in this proceeding and filed the direct testimony of G. Blaine Darrah, III.¹¹ On October 16, 1998, the Ratepayer Advocate notified BA-NJ that it objected to a number of BA-NJ's discovery requests and requested that such requests be withdrawn. On October 20, 1998, BA-NJ refused to withdraw the questions and indicated that it would file a motion to compel if complete responses were not filed. On October 21, 1998, the Ratepayer Advocate contacted by telephone the Honorable Mumtaz Bari-Brown and requested a telephone conference to resolve the discovery dispute between the Ratepayer Advocate and BA-NJ. On October 29, 1998, BA-NJ responded to the Ratepayer Advocate's letter to the ALJ regarding the ongoing discovery dispute and BA-NJ subsequently filed a motion to compel on October 30, 1998. The parties subsequently resolved the discovery dispute and the Ratepayer Advocate provided additional responses on

⁹ In a conference call on August 5, 1998 the following revised schedule was agreed upon: supplemental discovery on the cost data provided by BA-NJ on July 31, 1998 by August 28, 1998; responses to supplemental discovery by September 30, 1998; filing of Ratepayer Advocate's initial testimony by October 5, 1998; discovery as to Ratepayer Advocate's testimony by October 13, 1998; Ratepayer Advocate to respond to discovery requests and other parties to file reply/supplemental testimony; or rebuttal testimony by November 13, 1998; and hearings on December 1-4, 1998.

¹⁰ On May 13, 1998, Mr. Laub filed testimony which adopted the prefiled testimony previously submitted by Mr. Mark DeFalco on behalf of MCI.

¹¹ Mr. Darrah had filed direct testimony on March 30, 1998 and the November 23, 1998 supplement thereto updated his occupation and educational background. Mr. Darrah retired from AT&T in July 1998 after 33 years of service.

November 6, 1998.¹²

On October 22, 1998 while the discovery dispute with the Ratepayer Advocate was pending, BA-NJ responded to several objections raised by AT&T on October 12, 1998 regarding BA-NJ's responses to AT&T's interrogatories 59, 62, 63, and 69. In BA-NJ's responses dated October 12, 1998, BA-NJ provided documents which were intended to support and be the basis for its statement that the tone study is a statistically accurate study. In addition, BA-NJ extended an offer to all parties to review it.¹³ On November 19, 1998 after having reviewed the "Tone" study, the Ratepayer Advocates submitted questions to BA-NJ.¹⁴

¹² The Ratepayer Advocate and BA-NJ agreed that BA-NJ would have until November 20, 1998 to file its supplemental rebuttal testimony. This extension was agreed to give BA-NJ 13 days to file its supplemental rebuttal testimony.

¹³ "Tone" study is a Continuous Rolling Average Cost Study developed by BA-NJ which enables BA-NJ to determine the amount of time spent on handling various calls. BA-NJ used this study to justify the cost of educational calls in its EARC study. BA-NJ furnished selected portions of the "Tone" study to the parties at the hearing, reversing its prior position that the Tone study would not be provided. See November 25, 1998 letter to the Ratepayer Advocate and see RPA-7. The "Tone" study also tracks the time for handling PIC calls received by BA-NJ's residential and business office. The Ratepayer Advocate, in a request dated November 24, 1998, asked that BA-NJ make the complete Tone study available at the upcoming hearings. AT&T also made a similar request on November 25, 1998.

¹⁴ BA-NJ provided answers to those questions in a November 30, 1998 letter to the Ratepayer Advocate.

Subsequently, the Ratepayer Advocate received the supplemental rebuttal testimony of John A. Pehta. In that testimony, Mr. Pehta relies on a Task Oriented Costing (“TOC”) study, a Direct Order Entry (“DOE”) system and a Minimal Input Service Order System (“MISOS”) to support his supplemental rebuttal testimony on the appropriate price for the various PIC charges.¹⁵ On November 24, 1998 the Ratepayer Advocate filed a letter with the Honorable Bari-Brown requesting that her Honor find that BA-NJ had not complied with its discovery obligations and that the ALJ impose the sanction of striking Mr. Pehta’s supplemental rebuttal testimony. On November 30, 1998, BA-NJ sent a letter to The ALJ in response to the Ratepayer Advocate’s letter.

On December 1, 1998, the Honorable Mumtaz Bari-Brown ruled that the testimony would not be stricken and the motion would remain pending.¹⁶

¹⁵ See supplemental rebuttal testimony of John A. Pehta, BA-NJ 8, at page 9, lines 10-17, page 12, lines 21-26, and page 13, lines 1-8. Previously in AT&T 2, AT&T 8, MCI 1, and MCI 2, BA-NJ had been asked to produce all copies of any and all cost studies, memorandum, workpapers, models, or other documents supporting their submission in this proceeding but the TOC study, DOE and MISOS were not previously produced.

¹⁶ See Transcript Volume 3, pages 262-284. On December 9, 1998, the Honorable Bari-Brown denied the motion for sanctions but took under consideration whether a negative inference would be appropriate as part of the ALJ’s review of the entire record. The negative inference requested is that BA-NJ did not update its PIC study because if it had, the updated cost study would show lower direct costs for the PIC charges. See Transcript Volume 7, pages 1271-1273.

Hearings were conducted as scheduled on December 1, 2, 3, and 4, 1998.¹⁷ Additional hearings were held in January and the record closed on January 11, 1999.

**APPLICABLE COST STANDARDS FOR ASSESSING THE
REASONABLENESS OF EARC AND PIC CHARGES COSTS**

¹⁷ On December 1, 1998, BA-NJ continued the direct examination of Mr. Pehta and AT&T started its cross examination of Mr. Pehta. On December 2, 1998, AT&T completed its cross examination of Mr. Pehta, MCI started and finished its cross examination of Mr. Pehta and the Ratepayer Advocate started its cross examination of Mr. Pehta. On December 3, 1998, the Ratepayer Advocate finished its cross examination of Mr. Pehta, the Deputy Attorney General (“DAG”) started and concluded its cross examination of Mr. Pehta, BA-NJ conducted its redirect of Mr. Pehta, and recross was completed by the Ratepayer Advocate, AT&T and MCI. On December 4, 1998, the direct examination of James F. Dionne started, and was followed by cross examination by BA-NJ and the DAG, followed by redirect by AT&T and followed by recross by BA-NJ. AT&T started and completed the direct examination of G. Blaine Darrah, III and was followed by cross examination by BA-NJ, redirect by AT&T, and recross by BA-NJ. Thereafter, the direct examination of Don A. Laub started, and was followed by cross examination by BA-NJ, redirect by MCI and recross by BA-NJ. The Ratepayer started and completed its direct examination of Mr. Longo and was followed by cross examination by BA-NJ. On December 9, BA-NJ completed its cross examination and it was followed by redirect by the Ratepayer advocate and recross by BA-NJ. On January 11, 1999, a telephone hearing was held and Mr. Pehta provided answers to several transcript requests made by the parties and that was followed by cross and redirect examination. The hearings were completed on January 11, 1999.

In the *Order of Interim Approval*, the Board determined that EARC recovery is limited to only the direct, incremental costs associated with implementation of presubscription and those costs include, but are not limited to, switch software, translation costs, and costs to modify customer service and customer records and business office practices to accommodate presubscription, and transferred the matter to the OAL for hearing.¹⁸ The Board directed the OAL to thoroughly review and analyze each rate element for the EARC recovery and for the establishment of PIC change charges. Any detailed review and analysis requires that BA-NJ furnish current, complete, and accurate data to the OAL and the other parties in this proceeding. For EARC recovery, all parties agree that eligible costs do not include any recovery for general & administrative expense (“G&A”) associated with presubscription.¹⁹ As discussed more fully below, the Ratepayer Advocate submits that direct incremental costs do not include general upgrade costs, advancement of costs, and other incidental costs not directly attributable to the functionality of intraLATA presubscription. That is, when functions other than intraLATA presubscription are implemented concurrently with the implementation of presubscription, the cost related to the other functions are not properly included as a direct incremental cost. In its *Toll Dialing Parity Order*, the FCC concluded that dialing parity costs should be recovered “in the same manner as the costs of interim number portability, as mandated in our recent Number Portability Order.”²⁰ See *Telephone Number Portability Order*,

¹⁸ See *Order of Interim Approval*, supra at page 1 and N.J.A.C. 14:10-10.4 (b).

¹⁹ See *Order of Interim Approval*, supra at page 3; and Transcript dated June 10, 1998 at page 147, lines 22-25 (BA-NJ concedes that G&A is not a direct incremental cost and therefore is not recoverable under the EARC).

²⁰ See *I/M/O the Local Competition Provisions of the Telecommunications Act of 1996; Interconnection Between Local Exchange Carriers and Commercial Mobile Radio Service Providers; Area Code Relief Plan for Dallas and Houston, Ordered by the Public Utility Commissions of Texas; Administration of the North America Numbering Plan; Proposed 708 Relief Plan and 630 Numbering Plan area Code by Ameritech-Illinois*, 11 FCC rcd 19392, 19439 at ¶ 92 (August 1996) (“*Toll Dialing Parity Order*”). Attached hereto as Exhibit C.

FCC 96-286, CC Docket No. 95-116 (July 2, 1996).

Therefore upgrade costs, advancement of costs and incidental costs for implementation of Toll Dialing Parity (IntraLATA Toll Presubscription in New Jersey) are not recoverable as direct incremental costs and are excluded from the EARC, as required by the FCC in its *Number Portability Order*.²¹

²¹ In *Telephone Number Portability Cost Classification Proceeding*, CC Docket No. 95-116; RM 8535, DA 98-2534, *Memorandum Opinion and Order* (released December 14, 1998), the FCC discusses what costs are direct costs versus what costs are incidental costs as they relate to implementation of long-term number portability. A copy of the order is attached hereto as Exhibit B.. The Ratepayer Advocate submits that the FCC's analysis of the appropriate costs for implementing Long-Term Number Portability ("LNP") set forth in its *Memorandum Opinion and Order* must be applied in this proceeding and when applied, upgrade costs, advancement costs, and other incidental costs are not included as direct incremental costs for intraLATA presubscription. Therefore, the Board is required to follow the FCC's rules and only permit recovery of the direct incremental costs (as defined by the FCC) and neither the Board nor BA-NJ may include such costs in the EARC. The FCC rejected that general upgrade costs should be a direct cost when it stated at paragraph 11 of its *Memorandum Opinion and Order*:

In addition, we conclude that the two-part test we adopt to determine whether costs may be recovered through the federal charges recovery mechanism avoids overcompensation of LECs for their costs. That is, LECs are already deemed to be recovering costs of general network upgrades through standard recovery mechanisms and should not be allowed to recover such costs both through federal LPN charges and under price cap or rate-of-return regulation. In addition, as the Commission recognized in the Third Report and Order, upgrades will enhance LEC's services generally, and at least some portion of such upgrade costs are not directly related to providing number portability. For these reasons, we find that such costs should not be recoverable through federal LNP charges.

With respect to advancement of costs, the FCC found that advanced costs could only qualify as an eligible direct cost if the LEC demonstrates what specific portions of such advanced costs were necessary and directly related to implementation of LNP. The FCC defined "advanced costs" as those costs arising from the cost of money or the time value of money that has been incurred for the deployment of upgrades or modifications to the network at an accelerated pace or earlier date than provided for in the LEC's original plans. Specifically, the FCC held at paragraph 30 of its *Memorandum Opinion and Order*:

Although the costs of planned upgrades may have been advanced by LNP requirements and LECs would not have deployed the upgrades early "but for" the Commission's portability implementation schedule, the associated upgrades provide general enhancements to LECs networks. As such, we find that only the incremental portion of such costs directly related to the provision of number portability may be recovered as eligible LNP costs (footnote omitted). Thus, LECs may claim only the advance costs associated with the difference between the costs of the upgrade with the LNP functionality and its costs without that functionality. In such cases, LECs should provide evidence clearly demonstrating that the replacement or "advancement" is actually due to number portability and would not have occurred otherwise.

Incidental costs are ineligible costs for purposes of recovery and are not a direct incremental costs. Ineligible incidental costs include prior embedded investment, interim switch software for generic upgrades necessary prior to

implementation and any portion of any upgrade that is not exclusively needed for implementation. See *Memorandum Opinion and Order* at paragraphs 18, 27 and 28 respectively. The Ratepayer Advocate believes that many of the discrete costs which BA-NJ claims as direct incremental costs and which BA-NJ seeks reimbursement for in the EARC are incidental costs that are not recoverable in the EARC. To allow such recovery, would violate the FCC's rules.

Initially, the FCC's *Toll Dialing Parity Order* was stayed by the 8th Circuit Court of Appeals.²² In *AT&T Corp. v. Iowa Utils. Bd.*, ___ U.S. ___, 67 U.S.L.W. 4104, 1999 WL 24568 (Jan. 25, 1999), *reversing in part and affirming in part, Iowa Utils Bd., v. FCC*, the Supreme Court reversed the 8th Circuit Court of Appeals stay of the FCC's dialing parity rules and the Supreme Court held the FCC had jurisdiction to promulgate dialing parity rules. See Exhibit A hereto at page 11. The FCC's *Toll Dialing Parity Order* is now binding upon the Board and the OAL as the Supreme Law of the Land. That order requires the application of LNP rules to this proceeding. When those rules are applied, the recovery sought by BA-NJ is not supportable.

²² See *Iowa Utils. Bd et al v. FCC et al*, 124 F.3d 934 (8th Cir. 1997).

The FCC's *Toll Dialing Parity Order* only applies to implementation costs and does not address what pricing standards apply to PIC charges. Therefore, the Board may properly permit recovery of G&A in setting rates for PIC changes. In our opinion, the Board did not limit recovery of PIC changes and the costs associated therewith to direct incremental costs. The Ratepayer Advocate believes that the PIC charges associated with intraLATA presubscription is a new service offering in New Jersey and only reasonable amounts for G&A and profit are appropriate and the G&A rate element and the profit element must be reviewed and analyzed independently from the other rate elements.²³ MCI and AT&T interpret the Board's *Order of Interim Approval* as precluding the recovery of G&A and profit on PIC charges. We disagree.

**SUMMARY OF THE RATEPAYER ADVOCATE'S POSITION
ON THE EARC RECOVERY CHARGE AND PIC CHARGES
PROPOSED BY BA-NJ**

Based upon the evidence presented in this proceeding, the Ratepayer Advocate reaches the following conclusions and respectfully requests that Your Honor issue a Recommended Decision that finds:

- (1) BA-NJ has failed to meet its burden of proof regarding the appropriate PIC Charges for intraLATA toll presubscription in this proceeding.
- (2) BA-NJ cost study supporting its rates for PIC charges should be given no weight. Because the cost for making PIC changes is based upon triple hearsay and otherwise violate the residuum rule.
- (3) PIC charges should be set no higher than the rates recommended by the Ratepayer

²³ As discussed below, the Ratepayer Advocate submits that BA-NJ has failed to disclose what it is seeking to recover for G & A and what it is seeking to recover for profit. Instead BA-NJ improperly lumps both rate elements into one category called "contribution". This approach does not permit the ALJ or the other parties to this proceeding to thoroughly review and analyze the cost of each rate element. Therefore, BA-NJ has not met its burden of proof and it failed to demonstrate that proposed PIC charges are reasonable, just, and appropriate.

Advocate in its prefiled direct testimony;

- (4) BA-NJ has failed to show that its is only recovering the direct incremental costs associated with implementation of intraLATA Toll presubscription.
- (5) BA-NJ has failed to provide sufficient information to thoroughly review and to analyze each rate element for which it seeks recovery under EARC; specifically BA-NJ has failed to support recovery in the amounts claimed for Network costs which include switch translation, and switch software costs; customer sales costs which include educational call costs, training costs, new method and procedures costs; project team costs; total one time costs; and annual investment costs.
- (6) BA-NJ is seeking to recover general upgrade costs, advancement costs and other incidental expenses not directly related to IntraLATA Toll presubscription.
- (7) The EARC should be revised to deduct costs associated with various adjustments recommended by the Ratepayer Advocate.
- (8) If an annual true-up is required, such annual true-up shall be in accordance with AT&T's true-up proposal.
- (9) That BA-NJ must make refunds with interest to all customers who made PIC changes at the interim PIC rates.

There is no disagreement that BA-NJ has the burden of proof in this proceeding. The Prehearing Order states that BA-NJ has the burden of proof in this proceeding.²⁴ In order to meet its burden of proof, BA-NJ submitted PIC cost studies and asserted that those PIC cost studies and supporting documentation fully support and provide full and complete information for the four PIC change rates proposed in BA-NJ's interim tariff (Transcript Volume 2, Page 223 at lines 4-16, Page 241 at lines 15-20, Page 242 at lines 1-3, and Volume 4, Page 479 at lines 14-17). As discussed more fully below, the facts show that BA-NJ did not provide full and complete information. Instead, BA-NJ supplied inaccurate, misleading and outdated information while having more accurate,

²⁴ The ALJ acknowledged that BA-NJ has the burden of proof in justifying the rates (Transcript Volume 5, Page 727 at lines 15-20) and acknowledged that the record is sufficient as to whether or not BA-NJ has justified their costs (Transcript Volume 5, Page 732 at lines 19-23).

current and complete data available to it. Even though the updated data was available, BA-NJ did not provide it. Additionally, BA-NJ sought to reverse and disclaim its position that PIC charges should mirror the FCC's interLATA PIC charge and in its rebuttal testimony asserted that the BA-NJ study submitted to the FCC was not as rigorous and should not be relied upon by the Board.²⁵

²⁵ Mr. Pehta states on cross examination that the FCC study was less rigorous and not as thorough as BA-NJ's cost study presented in this proceeding (Transcript Volume 4, Page 493 at lines 12-25; accord Pehta's supplemental rebuttal testimony, Page 19 at lines 1-5) and the Board should not rely upon the results of the FCC study but should rely upon the BA-NJ PIC cost study (Transcript Volume 4, Page 497 at lines 14-19).

In the prefiled direct testimony of Mr. West, BA-NJ justifies the \$5.00 rate by stating that it should mirror the FCC interLATA rate (West prefiled direct testimony, Page 7 at lines 17-18 and West rebuttal testimony, Page 5 at lines 11-13). Mr. West maintains his position that the intraLATA PIC should mirror the FCC's rate. See Transcript Volume 1, Page 41 at lines 22-25, Page 42 at lines 15-19, Page 43 at lines 6-9, Page 47 at line 5-11, Page 157 at lines 18-25, Page 158 at lines 1-4 and Page 175 at lines 15-20.²⁶ But, Mr. Pehta argues that the amount of time for service representatives used in the FCC filing should be ignored and not mirrored. This is inconsistent. You cannot pick and choose portions of the study and disregard the other portions. This is what Mr. Pehta has done. In Mr. Pehta's supplemental rebuttal, BA-NJ takes the following position on the methodology and cost support to the FCC study:

The service representative time in the FCC study should not be used. First, as I mentioned earlier, the outdated FCC study was not submitted to develop the costs of intraLATA presubscription in New Jersey or anywhere else. Second, the times used in the FCC study were estimates developed by members of the product team. This team observed service representatives in several of the business and residence service centers. This process was less rigorous than the process used to develop the times used in BA-NJ's cost study submitted in this case. (Pehta's supplemental rebuttal at Pages 17-18 at lines 21-26 and lines 1-5)

Mr. Longo appears to base his comment on a study submitted by Bell Atlantic to the FCC over five years ago. That study differs in important respects from that submitted by BA-NJ in this proceeding. The format of the two cost studies is different. Most significantly, the five-year-old FCC study separately identifies times for both the first line and any additional line on the service order. As I described above, the BA-NJ study develops the time for a PIC change, which

²⁶ See AT&T Exhibit 4 in which BA-NJ responded to AT&T interrogatory 33. That response states in pertinent part, "the rate decision was to mirror the interstate rate."

already reflects an average of times for both first and additional lines. (Pehta's supplemental rebuttal, Page 8 at lines 7-17)

The times used in the PIC change cost studies for service representatives are based upon a Task Orientated Costing ("TOC") study. The TOC study identifies times associated with business office activities by getting estimates of the times from the people who are actually doing the work in the customer service centers. This was not just a few people guessing as to times, but a process designed to get enough data points to develop a valid consensus time or average work time, ignoring outlying data points. This process is necessary because it is impracticable to do a statistically valid time and motion study in every customer service center for the hundreds of service, which are sold by BA-NJ. The activities, which take place in a customer service center, including the service order process, are very complex. Any attempt to gather statistically valid samples of every service order process would also interfere unnecessarily with BA-NJ's service to its customers. The process employed in the TOC study is very different from the estimates of time associated with the educational calls to the customer service centers used in the original EARC cost study. As a result, Mr. Longo's comparison of the original estimated costs of the educational calls with the actual costs developed using the "tone study" is inappropriate. His attempt to cast doubt on the times used in the non-recurring PIC change cost studies should be ignored. (Mr. Pehta's supplemental rebuttal, Pages 9 and 10 at lines 10-26 and lines 1-12)

Without explanation and in an unabashed attempt to change its position, BA-NJ in the supplemental rebuttal disavows the underlying support and methodology that BA submitted to support its 1993 tariff filing while at the same time maintaining that rates should mirror the interLATA rate approved by the FCC based upon BA's current cost study. It is clear that filings made to the FCC must be truthful. This means that filings must be current, complete and accurate. In fact, the FCC promulgated a rule that requires truthful written submissions. Section 1.17 of the FCC's rules provides:

The Commission or its representatives may, in writing request, require from any applicant, permittee or licensee written statements of fact relevant to a determination whether an application should be

granted or denied, or to a determination whether a license should be revoked, or to some other matter within the jurisdiction of the Commission. No applicant, permittee, licensee shall in any response to Commission correspondence or inquiry or in any application, pleading, report or any written statement submitted to the Commission, made any misrepresentation or willful material omission bearing on any matter within the jurisdiction of the Commission. See 47 C.F.R. § 1.17.²⁷

BA-NJ can not credibly disavow the support documentation and methodology used to support BA's 1993 filing. BA-NJ admitted on cross examination that in each service ordering office the same personnel make interLATA PIC changes and intraLATA PIC changes. See Transcript Volume 3, Page 167 and 168 at lines 23-25 and lines 1-14. Similarly, BA-NJ has admitted that the service order representative's time to make a PIC change is a material driver of the costs of the PIC changes. See Transcript Volume 4, Pages 662 - 674. BA-NJ admits that the service representative's time for making a residential PIC change is 57% of the total cost and the service representative's time for making a business PIC change is 79% of the total cost.²⁸

²⁷ The note to Section 1.17 provides: "Section 1.17 is limited in application to written matter. It implies no change in the Commission's existing policies respecting the obligation of applicants, permits and licensees in all instances to respond truthfully to requests for information deemed necessary to the proper execution of the Commission's functions." The Ratepayer Advocate also notes that false statements to the FCC would subject BA to civil and criminal penalties under the False Claims Act and under Title 18 U.S.C. 1001. Therefore, there is a presumption that the information and support accompanying the Federal filing is truthful and otherwise current, complete and accurate.

²⁸ See Transcript Volume 4, Page 668 at lines 1-14; BA-NJ # -4 , Exhibit 4 at page 8 for service order cost of \$7.12 for business and \$2.59 for residential.

The Ratepayer Advocate submits that as a matter of law, BA-NJ is precluded from disavowing in this proceeding the support and methodology underlying its Federal filing when it has relied on its Federal filing as support for mirroring the \$5.00 rate. BA-NJ cannot disclaim the service ordering times for business of 6 minutes in 1993 and now claim that the service order time is 11 minutes.²⁹ The doctrine of waiver and estoppel precludes such a result. *See Am Jur 2d, Estoppel and Waiver* § 75; *Environmental Concerns, Inc. v. Larchwood Construction Corp. et al.*, 101 A.D.2d 591, 476 N.Y.S. 2d 175 (A.D. 2nd 1984). The doctrine of estoppel precludes a party from taking a position inconsistent with a position taken in a prior proceeding; where a party assumes a certain position in a legal proceeding and succeeds in maintaining that position, he may not thereafter assume a contrary position simply because his interests have changed. See also *Buck v. Kuykendall*, 267 U.S. 307, 316, 45 S. Ct. 324, 69 L. Ed 623 (1924); *National S.S. Co. v. Tugman*, 143 U.S. 28, 32, 12 S. Ct. 361, 36 L. Ed. 63 (1892). This prohibition applies to inconsistent positions during the same proceedings taken at different times.³⁰

²⁹ The Ratepayer Advocate has conservatively used 4 minutes for service time for making residential and business intraLATA PICs. The decrease to 4 minutes from 5 for residential and 6 minutes for business is based upon productivity gains coupled with implementation of updated support systems. In the absence of current, complete and accurate data from BA-NJ, use of 4 minutes is appropriate and reasonable. BA-NJ has more current, accurate and complete data available, i.e. the Tone study.

³⁰ BA-NJ's attempt to disavow the Federal filing affects adversely on BA-NJ's credibility in this proceeding. It is totally inconsistent to say that rates should mirror other rates while at the same time BA-NJ impugns

**BA-NJ's Reliance Upon a 1990 TOC Study to Disavow BA's 1993
Federal Filing Which BA-NJ Cannot Produce is Inappropriate
and Violates N.J.A.C. 1:1-15.5(b)**

N.J.C.A. 1:1-15.5(b) provides as follows:

the support documentation and methodology underlying the filing in the first instance. It is obvious why BA-NJ wants to disavow the support documentation and methodology. If one uses the service order representative times in the 1993 filing, BA-NJ's [**Begin BA-NJ Proprietary** [End BA-NJ Proprietary] cost for the PIC is reduced by more than one-third.

Notwithstanding the admissibility of hearsay evidence, some legally competent evidence must exist to support each ultimate finding of fact to an extent sufficient to provide assurances or reliability and to avoid the fact or appearance of arbitrariness.

This rule is referred to as “Residuum Rule.” *See Matter of Tenure Hearing of Cowan*, 224 N. J. Super. 737; 541 A.2d 298 (App. Div. 1988). The facts show that BA-NJ has no competent evidence to support its assertion that for business calls, the service representative time is 11 minutes and for residential calls, the service representative time is 4 minutes. Both the residential and business service times included in the PIC cost study identified in Mr. Pehta’s direct testimony are based upon triple hearsay. Mr. Pehta testified on cross examination that the TOC study was produced in 1990 (Transcript Volume 4, pages 546 and 547 at lines 23-25 and line 2); that he did not review the study prior to preparing his testimony (Transcript Volume 4, page 547 at lines 14-17); that no one at BA-NJ had reviewed the TOC Study in connection with the preparation of the PIC cost study in this proceeding (Transcript Volume 4, page 548 at lines 8-9); Mr. Pehta’s knowledge of the TOC Study is only through verbal communications (hearsay) (Transcript Volume 4, pages 549 and 551, times at lines 18-25 and 11-17); and the person who prepared the TOC study and the person who used the data to develop times have both left the company (Transcript Volume 4, page 550 at lines 18-24).³¹

³¹ See Transcript Volume 3, pages 267-284 in which Counsel for BA-NJ admits that the information Mr. Pehta received was passed verbally from several BA-NJ employees, none of whom are now with the company and BA-NJ chose not to produce them at the hearing. BA-NJ would have decided on the basis of triple hearsay.

With no credible evidence to support the service representative's time for PIC changes as claimed by BA-NJ in its PIC cost study - which by the way is singularly the most material component of the PIC cost and the material driver of PIC costs - BA-NJ has simply failed to meet its burden of proof in this proceeding. BA-NJ's cost study should be given no weight.³² Notwithstanding these obvious and serious deficiencies, BA-NJ is seeking to recover excessive contributions on its PIC change, PIC guaranteed satisfaction, and PIC switchback charges. BA-NJ is asking for a \$1.93 contribution on its PIC change and PIC guaranteed satisfaction charges and is asking for \$1.46 on its PIC switchback charge.³³

**The Board Should Adopt PIC Charges No Higher Than Those
Recommended by the Ratepayer Advocate**

In view of the forgoing, the Ratepayer Advocate submits that the PIC charges should be set no higher than as follows:

<u>Change</u>	<u>Cost</u>	<u>Markup</u>	<u>Rate</u>
PIC change	\$1.85	20%	\$2.21
PIC guaranteed	\$1.85	20%	\$2.21

³² Even if the BA-NJ PIC cost study is afforded some weight, which it should not be, BA-NJ has failed to provide adequate information to thoroughly review and analyze each rate element and to assess whether the proposed PIC charges are fair, just and reasonable. BA-NJ admits that intraLATA PIC charges are a new service. See West cross examination Transcript Volume 1, page 13 at lines 24-25; page 67 at lines 10-16; and page at lines 21-23 and 183. See Pehta cross examination Transcript Volume 5, page 734 at lines 19-24. As a new service, the Ratepayer Advocate submits that general costing principals require the submission of a cost study with complete explanations of the basis for estimates and workpapers and statistical data. These general costing principals apply to new services tariffed at the Federal level. See 47 C.F.R. § 61.49, RPA-5. Likewise, these same general principals should apply at the state level. Without such detail, one cannot thoroughly review and analyze each rate element of the proposed new service offerings for intraLATA PIC charges.

³³ As a markup based upon the cost, the PIC change and PIC guaranteed satisfaction charges are marked up 63% and the PIC switchback charge is marked up 23%. This appears excessive for services provided as regulated services. In addition, BA-NJ performed no cost study to support joint and common costs. See West cross examination Transcript Volume 1, page 55 at lines 16-19; and page 121 at lines 9-11. Again, this is another example of the way in which BA-NJ has failed to meet its burden of proof in this proceeding.

Satisfaction			
PIC Switchback	\$3.69	20%	\$4.43
Unauthorized PIC	\$27.15	10.5%	\$30.00
Change			

These recommended rates are based upon Attachment 1 to Mr. Longo's direct testimony (Exhibit RPA-8). These rates assume that when there is a simultaneous PIC for interLATA and intraLATA, the intraLATA PIC will be at no charge. These rates also factor in an additional line.³⁴

Alternatively, if BA-NJ is permitted to charge for an interLATA PIC and an intraLATA PIC when performed on the same service order, the Ratepayer Advocate submits that the PIC charges should be set no higher than the following:³⁵

<u>Change</u>	<u>Cost</u>	<u>Markup</u>	<u>Rate</u>
PIC change	\$1.44	20%	\$1.73
PIC guaranteed	\$1.44	20%	\$1.73
Satisfaction			
PIC Switchback	\$2.88	20%	\$3.45
Unauthorized PIC	\$27.15	10.5%	\$30.00
Change			

The Ratepayer Advocate believes that BA-NJ should be directed to revise its tariff so that the PIC switchback charge should only apply if a customer has not paid for the initial PIC change. The

³⁴ Although BA-NJ insists that its PIC cost study included a factor for additional lines, it is clear that BA-NJ's PIC cost study should be given no weight under the "Residuum Rule." Furthermore, BA-NJ has failed to meet its burden of proof. Mr. Pehta's testimony on additional lines is inconsistent and contradictory. See Transcript Volume 4, page 488 at lines 20-21 and page 501 at lines 13-17. Mr. Pehta asserts that the four minutes is an average so it represents both first and additional lines. However, if two lines are changed in the same service order, those changes requires 8 minutes of time. See Transcript Volume 4, page 489 at lines 17-25. Mr. Pehta is unable to show how PIC cost study reflects an average. See Transcript Volume 4, page 503 at lines 22-25 and page 504 at lines 1-7. Mr. Pehta is unable to show where in his direct testimony or in his rebuttal testimony there is any reference to additional lines or whether additional lines were considered. See Transcript Volume 4, page 675 at lines 18-23. Lastly, Mr. Pehta is unable to verify what percentage of additional lines were used in deriving the average. He does not know whether it is one percent, five percent or ten percent and cannot determine the percentage. See Transcript Volume 4, page 677 at lines 14-17 and page 678 at lines 16-19. The record in this proceeding does not support BA-NJ's position.

³⁵ See Attachment 2 to Mr. Longo's prefiled testimony.

PIC switchback assumes that the customer has not paid for the initial PIC change and subsequently the customer calls BA-NJ to request a switchback. Unless this restriction is placed in the tariff, BA-NJ could recover costs for 3 PIC changes.

Based upon the Tone Study information supplied by BA-NJ, the Ratepayer Advocate recalculated the maximum rate for PIC changes. These rates are as follows:

<u>Change</u>	<u>Cost</u>	<u>Markup</u>	<u>Rate</u>
PIC change	\$1.83	20%	\$2.19
PIC guaranteed Satisfaction	\$1.83	20%	\$2.19
PIC Switchback	\$3.66	20%	\$4.39
Unauthorized PIC Change	\$27.15	10.5%	\$30.00

These recalculated rates, which are consistent with the rates recommended by the Ratepayer Advocate in the prefiled testimony, are based upon a calculation of the service representative times per category 47 of the Tone study, a RMAC rate of \$0.78 for business and residential, an adjustment to the mechanized versus manual processing percentages from 67.5/32.5% to 72.9/27.1% assuming a ten percent fall out. See Transcript Volume 4, page 618 at lines 1-15 (Mr. Pehta admits the percentage is 81% for mechanized for 1997 based upon the number of PIC reported by BA-NJ in Exhibit AT&T-20).³⁶ See Attachment 7 hereto, which shows how the rates were derived.

³⁶ Mr. Pehta admits in his cross examination that the Tone study is a statistically valid sampling method for determining the percentage of time that the business office spends on large numbers of services on a service by service basis. See Transcript Volume 5, page 782 at lines 16-25 and page 783 at lines 1-6. Based upon Exhibit RPA-7 which includes selected portions of the Tone study, the Tone study also tracks various residential and business services. Mr. Pehta, in his cross examination, discussed in great detail the Tone study and how it was used to derive the times spent by the business and residential offices on EARC educational calls. See Transcript Volume 5, pages 769-773, pages 777-782, and pages 818-832. Mr. Pehta claims that the Tone study only derives a portion of the time for educational calls and that you have to look at other service categories to determine the times for educational calls. The Ratepayer Advocate notes that Mr. Pehta's position is contrary to the manner in which BA-NJ used the Tone study to reduce the cost of educational calls to \$920,759.00. BA-NJ's revised estimate of \$920,759.00 for educational calls is predicated on the annual time (the total time spent on all services times the educational call percentages for each service office) and that time when multiplied by the applicable labor rate equals \$920,759.00. BA-NJ did not include other categories of

PIC Refunds From BA-NJ are Required.

In view of the foregoing, the Ratepayer Advocate respectfully requests that the Board order BA-NJ to make refunds consistent with the PIC rates approved in this proceeding. The refunds should also include interest and that interest rate should be based upon a cost of capital of 10.4%.

**BA-NJ Has Not Met its Burden of Proof and has Failed to Show
That Only Direct Incremental Costs are Being Recovered in the
EARC.**

service to increase its estimated costs for educational calls. Therefore, one can see that Mr. Pehta's testimony on this point is inconsistent with and contradictory to his filed testimony. As discussed below in the EARC educational analysis, the Ratepayer Advocate believes that Category 48 gives the maximum time available for handling EARC calls. That maximum time is then apportioned between three service areas: (1) service order, (2) billing, toll and inquiry, and (3) miscellaneous. Only the miscellaneous service area represents the incremental cost for educational calls. This is just another one of many instances in which BA-NJ has taken inconsistent and contradictory positions. The validity of its cost studies is undermined and its reliability is cast in doubt.

The Ratepayer Advocate submits that the record in this proceeding shows that BA-NJ failed to furnish current, complete and accurate information to assess whether the EARC recovery sought complies with N.J.A.C. 14:10-10.4. That is, the EARC includes only the direct incremental costs for implementing intraLATA toll presubscription in New Jersey. As a result of BA-NJ providing inadequate, incomplete and non current data, one cannot thoroughly review and analyze each rate element of the EARC. Additionally, BA-NJ is attempting to recover general upgrade costs that are currently and more appropriately being recovered under either rate cap regulation or under Opportunity New Jersey (“ONJ”). BA-NJ is in effect seeking double recovery of costs as opposed to only its direct incremental costs. Similarly, BA-NJ is improperly seeking to claim certain incidental and “advancement of costs” as an otherwise eligible direct incremental cost. The Ratepayer Advocate submits that general upgrade costs, advancement of costs and incidental costs are not recoverable through the EARC and the Board should so hold. Specifically, the Ratepayer Advocate questions the following cost categories set forth in BA-NJ’s EARC study:³⁷

Section A. Network-switching translation costs

Section B. Switch software costs

Section C. Educational calls and training

Section D. Customer contact systems and network operations systems

Section H. Costs associated with advancement of hardware for switches.

³⁷ These sections correspond to the sections identified in the various EARC cost studies and filed by BA-NJ in this proceeding.

Besides the issues discussed in these sections, there are the separate issues of whether the costs associated with the 180 day free PIC period are included as a direct incremental cost of presubscription and what is the appropriate cost of money factor to be used. The Ratepayer Advocate submits that the 180 day free PIC is properly included in the EARC and that 10.4% for cost of money is appropriate. When all of the above is considered, the Ratepayer Advocate believes that the EARC charge should be set at \$0.000166 instead of the revised interim rate of \$0.000361.³⁸

If the EARC rate is set at \$0.000166, in our opinion, as of January 1999, BA-NJ has fully recovered the costs associated with implementation of intraLATA toll presubscription well shy of the five year period specified by the Board. Therefore, BA-NJ should be required to refund the over collected amount with interest.

Section A. Network
Issue: Switching Translation Costs (See Attachment 3)

³⁸ BA-NJ's interim tariff proposed an EARC of \$0.000545. Subsequently, BA-NJ revised the EARC to \$0.000361 in its prefiled testimony and further revised the EARC downward to \$0.000303 in its updated filing in July, 1998.

BA-NJ seeks to support the hours spent on switch translation costs by estimates from BA-NJ engineering personnel. Under the Board's *Interim Order*, the Ratepayer Advocate believes that BA-NJ should have instituted cost tracking procedures. Cost tracking procedures would have provided the necessary support to thoroughly review and analyze each rate element. BA-NJ has the capability and ability to track costs. BA-NJ simply failed to implement appropriate cost tracking procedures. If they had, BA-NJ could have easily used cost tracking to record the actual time to do the translations work. In that event, the parties would have reliable and current data on the switch translation costs for each type of switch, which they do not now have.³⁹

Of course, cost tracking documentation would mean that one would have actual cost data which is verifiable versus data based upon unverifiable estimates. A cost tracking system, if initiated by BA-NJ would be adequate evidence to support BA-NJ's claimed costs. Cost tracking breaks down the work into specific tasks that can be thoroughly reviewed and analyzed. However, BA-NJ provides no support or documentation as to why the translation work for a Lucent 5 E digital switch supposedly takes significantly longer than the translation work for other switch types. (See Dionne redirect Transcript Volume 6, page 1038, lines 9-18, also AT&T-22, Dionne testimony pp 4-5). Therefore, without adequate support, BA-NJ has failed to sustain its burden of proof. The 5E translation development hours sought to be recovered should be adjusted downwards to a level comparable to the other switch types (from 40 hours per switch to 12 hours per switch). BA-NJ's input hours show the same discrepancy. Therefore, input hours should be reduced to 11 hours per

³⁹ BA-NJ is claiming switch translation costs for four types of switches: (1) Lucent IAESS, (2) Lucent 5E/RSM, (3) Nortel DMS, and (4) Siemens. All of the support is based upon estimates without any supporting documentation. The translation times for the Lucent 5E/RSM switches are approximately 3 times more than those the other three types of switches. BA-NJ has failed to provide any explanation for the differences let alone support for the differences.

switch. As a result of these adjustments the translation costs are reduced from \$634,323.00 to \$202,053.00 (see Attachment 3 hereto.)⁴⁰

Section B. Switch Software
Issue: Switch Software Costs

Similar to translation costs, BA-NJ provides no support or documentation to apportion and allocate switch software costs for Lucent and Northern Telecom switches between permitted costs, direct incremental costs, and excluded costs, (upgrade, advance, and incidental costs). Without such apportionment and allocation, all switch software charges sought by BA-NJ should be eliminated or reduced. BA-NJ provides support and documentation on the Siemens switches but that information demonstrates that functions other than intraLATA toll presubscription were included in that release. Therefore, an allocation is required so that only the direct incremental costs for the intraLATA portion of the software release is recovered in the EARC. The network planning documents attached to Mr. Pehta's supplemental rebuttal testimony under Tab H demonstrate that this software release implemented call waiting ID and intraLATA PIC (Exhibit BA-NJ 8). See also AT&T cross examination of Pehta, Transcript Volume 3, pages 442 and 446 at lines 2-8 and lines 8-13. Specifically, the network planning document dated July 19, 1996 provides:

“Release 13 deployment will allow Consumer LOB to roll out Call Waiting ID service using the EWSD and activation of Multiple

⁴⁰ The Ratepayer Advocate notes that a change in one section impacts other sections. By way of example, if the costs associated with switch software is reduced, such reduction affects the number of hours for switch translation costs. BA-NJ assumes that the software costs are 100% allocable to implementation of intraLATA toll presubscription. As explained below, the Ratepayer Advocate believes no more than 50% of the software costs qualify as recoverable direct incremental costs.

Presubscription IntraLATA PIC (2 PIC).

Based on the above, it is clear that all of the costs for the Siemens software cannot be included in the EARC because there are at least two independent software functions associated with the software upgrades. Call waiting ID costs must be removed from the EARC. These costs have no functionality as to implementation of intraLATA presubscription. BA-NJ has the burden of proof to show the appropriate allocation and it has simply failed in that regard. No documentation was provided by BA-NJ for the three other types of switches (there is no evidence to support 100% allocation) and the documentation provided for the Siemens switches indicates that no more than 50% of the Siemens software should be recoverable in the EARC. (Exhibit BA-NJ 8)

As an alternative to removing all of the claimed software costs, the Ratepayer Advocate, as a conservative allocation believes that the software cost incurred for upgrading the four types of switches should be reduced by 50% unless BA-NJ can produce documentation that supports a higher allocation. As a result, the software component of the EARC should be reduced from a total of \$2,752,879 to \$1,336,440.⁴¹

Section C. Customer Sales (See Attachment 4)
Issue: Educational Calls

As discussed above, BA-NJ voluntarily chose not to track the actual number of educational calls. Instead, BA-NJ uses the Tone study to derive the cost of educational calls. Category 48 of the Tone study is intended as a statistically valid sampling procedure for measuring the time for educational calls. By using the Tone study results, BA-NJ claims that it can determine the number of hours expended on educational calls in a twelve month period. Once the hours are determined,

⁴¹ See footnote 40 above. This further reduces the allowable translation costs.

the cost of the educational call is derived by multiplying the number of hours by the applicable labor rate. See Transcript Volume 3, pages 405-423. However, the support documentation for category 48, shows

three subcategories: (1) Service Order, (2) Billing, Toll and Inquiry, and (3) miscellaneous. There is no substantiation that any time other than the time for the miscellaneous category should be included as the cost for educational calls. The instructions to the Tone study under the section entitled “CSC Examples” (Exhibit AT&T 12) includes examples of services and what category those services fall into. In the CSC portion of the instructions, example 21 reads as follows:

21. Customer questions 2-PIC charge on the bill
Cat. 48 - Billing Inquiry/Toll

This clearly indicates that category 48 includes more than just educational calls on 2-PIC. When one reviews the pertinent portions of the Tone study produced by BA-NJ in this proceeding (Exhibit RPA-7), it appears that the “miscellaneous” category represents the time associated with educational calls. For the residential service center (“RSC”), the “miscellaneous” category represents only 18 out of a total of 138 strokes for Category 48. Therefore, 84% of RSC time is spent on services associated with calls other than educational calls and only the remaining 11% of RSC time is spent directly on educational calls. BA-NJ substantially overstated the time for educational calls and its estimate must be reduced by 84%. This same analysis applies to business service center (“BSC”). For BSC, 1 out of a total of 17 strokes are in the “miscellaneous” category for category 48. Therefore, the BSC time should be reduced as well. The percentage reduction is .03%. After all the adjustments are made, the direct incremental cost for educational calls is reduced to \$112,944 from the \$920,759 claimed by BA-NJ.

Issue: Training (See Attachment 5)

BA-NJ consistently overstates the direct incremental cost associated with intraLATA presubscription. This is patently obvious when one examines the training costs area. Almost one-half of the training costs represent costs that should not be included in the EARC. BA-NJ included, as an EARC recoverable cost, the entire cost to produce the training workbooks with the exception of Module 3, which it excluded. BA-NJ excluded this module because by its own admission, Module 3 markets and promotes BA and BA toll services. Marketing costs are not recoverable in the EARC. Of the three hour training period, two and one half hours were deemed includable and properly recoverable in the EARC as direct incremental costs. Upon closer examination, it is clear that other modules contain costs which are not recoverable in the EARC. Several other modules were identified as having marketing content which promote BA and its products. Specifically, the record shows:

Module One

Transcript Volume 3, page 360, lines 5-11: “The sentence says: ‘It’s up to you to not only explain it to them, but convince them that Bell Atlantic is the best choice to handle their regional toll calls’.”

Transcript Volume 3, page 360, line 25 and page 361, lines 1-6: “Bell Atlantic has been successfully providing you with this service all along and we’d like to continue to serve you. But, we are required by law to give you the option to choose whatever company you want. We certainly hope you’ll stay with us.”

Transcript Volume 3, page 363, lines 4-9:

Q: And that part says, or the suggested response is, ‘I don’t know what other companies charge, but Bell Atlantic has always provided great value for the money.’ Do you see that sentence?

A: Yes.

Transcript Volume 3, page 364, lines 6-11: “Use every customer contact as an opportunity to delight, remind the customer of the quality of service they now receive from Bell Atlantic, encourage them to stay and inquire if they are aware of other services Bell Atlantic might offer them.”

Module Two

Transcript Volume 3, page 377, lines 15-25 and page 378: “A Module two: Negotiating 2-PIC. Module objective: Given various circumstances, participants should be able to describe and successfully negotiate maintaining Bell Atlantic as the customer’s choice for regional toll.”

Q: Is that a sales and marketing cost?

A: That particular description talks about successfully negotiating maintaining Bell Atlantic as the customer’s choice for regional toll.

Q: Is that a yes or no to my question?

A: Yes.

Q: And they spent 60 minutes on that module, correct?

A: Well they spent 60 minutes on that module and that is the objective.....”

Module Four

Transcript Volume 3, page 378, lines 19-25 and page 379, lines 1-3:

Q: Module four gives participants the skills and information they will need to be able to freeze Bell Atlantic as a customer’s regional toll carrier of choice. Do you see that?

A: Yes.

Module Six

Transcript Volume 3, page 380, lines 15-22: “And at the end of the summary, it says that participants are also going to be asked to sign a pledge to state that they can take on the job to maintain Bell Atlantic as customer regional toll carrier choice. Do you see that?”

A: Is that on the first page?

Q: Yes

A: Yes, that’s what it says.”

BA-NJ admits on the record that parts of the training materials appear to improperly benefit

Bell Atlantic's toll service and those portions are sales related. See Transcript volume 3, page 382, lines 21-25 and 383, lines 1-22. In light of BA-NJ's obvious attempt to use training sessions to instruct its personnel on how to market BA-NJ's intraLATA toll services, no more than one hour of the total 3 hour training should be included in recoverable costs. Since the original estimate for training time only deducted .5 hours for matters related to marketing, the total training time of 5.5 hours should be reduced by 1.5 hours.

Video tape

BA-NJ also used the video tape as a marketing tool as opposed to a training tool. During cross-examination by AT&T, Mr. Pehta acknowledged that a portion of the time associated with the tape should not be included in the costs because it involves selling. See Transcript Volume 4, pages 474, lines 5-11 ("Q. And at minimum that time should be removed from the cost study, if it's in there right now?-- A. If that tape is that, yes, if that is the appropriate tape and that is selling, that should not be charged to the interexchange carriers"). In view of the foregoing, the complete cost of the video tape should be removed from the study. This reduces the training time by another .25 hours.

As a result of the adjustments for the videotape and workbook, training costs are further reduced from \$419,438 to \$286,437.

Section D. Information Systems

Issue: Customer Contact Systems (See Attachment 6)

BA-NJ is seeking to recover in the EARC certain customer contact upgrades to its Direct Order Entry System ("DOE") and Minimal Input Service Order System ("MISOS"). The cost for upgrading these systems should be excluded from the costs recoverable under the EARC.

Prior to implementation of intraLATA toll presubscription, BA-NJ used these systems and it

continues to use these systems. The cost for upgrades to these systems is already being recovered under either rate cap regulation or ONJ. The cost of routine upgrades is not appropriate for inclusion in the EARC. Such routine upgrades are not a direct incremental costs. These systems were upgraded in 1996 well in advance of intraLATA toll presubscription. More compelling is the fact that BA-NJ has failed to provide sufficient support and documentation to justify the costs for the changes to DOE and MISOS. BA-NJ repeats its error by relying upon mere estimates in lieu of cost tracking procedures in the first instance. One cannot perform a thorough review and analysis when BA-NJ only provides estimates with no supporting detail and workpapers. It is clear that BA-NJ, during the period it was upgrading DOE and MISOS, expanded its service offerings to include call waiting, ISDN and other custom features. All of those service offerings would require revisions to DOE and MISOS. However, BA-NJ has made no allocations nor has it provided support that the DOE and MISOS costs incurred relate solely to intraLATA toll presubscription. BA-NJ has not meet its burden of proof.

BA-NJ is also seeking to recover costs implementing Sales/Service Negotiation System (“SSNS”). The SSNS system is intended to replace the DOE and MISOS systems at some point in time. See Transcript Volume 4, pages 534 at lines 13-17 where BA-NJ’s witness states, “It’s my understanding that is a system, a modernization system. The direct order entry system is the current system. This system at some point in time will replace it in all Bell Atlantic jurisdictions.” BA-NJ admits that SSNS is not used at this time. See Transcript Volume 4, page 531 at lines 19-22. Therefore, SSNS implementation costs must be eliminated from the EARC as well.⁴²

⁴²

An additional argument for excluding SSNS from the EARC is that SSNS costs are advanced costs

which do not qualify as direct incremental costs recoverable in the EARC.

BA-NJ has asked for recovery of implementation costs for the input manager, live wire and service express information systems. These systems were not available on May 5, 1997 and in fact the service express and input manager systems are not available for use today in New Jersey. See transcript responses in Exhibit AT&T 24. The live wire system was implemented on May 3, 1998, almost one year after intraLATA toll presubscription was implemented. In view of the above, the Ratepayer Advocate requests a reduction in allowable EARC costs for this category from \$1,227,943 to \$653,663.

Issue: Network Operations Systems

BA-NJ provides no support or documentation as to the need for the Bellcore NDSB system. As a result, there is no basis to determine whether implementation of NDSB is a direct incremental cost needed for intraLATA toll presubscription.⁴³ See Dionne redirect Transcript Volume 6, pages 1040-1042. Therefore, the Ratepayer Advocate recommends that NDSB costs be eliminated from the EARC. Additionally, other information systems which support competitive services (e.g., Centrex) should not be included in the EARC. BA-NJ has sought to recover cost for CCMS and MACSTAR/CDS/CSR totaling \$123,689 without explanation or support and without allocating such costs between the competitive and non-competitive service offerings that are supported by these systems. These costs are not includable in the EARC and should be eliminated.

⁴³ BA developed NDSB at the corporate level and a portion was allocated to New Jersey. There are states in which BA has yet to offer intraLATA toll presubscription. There has been no support or documentation to suggest that NDSB implementation was implemented solely to support intraLATA toll presubscription. BA-NJ has not meet its burden of proof and failed to present support and documentation to thoroughly review and analyze the cost reimbursement it claims.

Section H: Annual Investment Related Costs
Issue : Costs Associated With Advancement of Hardware for Siemens Switches

BA-NJ proposes to include the following hardware costs for Siemens upgrades and the purchase of additional memory for Lucent switches. See Exhibit BA-NJ 8.

[Begin BA-NJ Proprietary]

Item	Amount	Annual Costs
Hardware necessary to increase memory	\$	
Release 13 for Siemens switches	\$	
Sub-total	\$	\$
Release 13 investment advancement		\$
Total Hardware costs		\$

[End BA-NJ Proprietary]

The Ratepayer Advocate submits that BA-NJ has provided no evidence to show that the costs claimed for implementation of Siemens' Release 13 are not more than mere general upgrade costs which are not recoverable. Under the FCC's rules, general upgrade costs are not direct incremental costs for purposes of cost recovery. The principals underlying recovery of LNP costs are the same principals that underlie recovery of intraLATA implementation costs, only the direct incremental costs are recoverable. In our opinion, the Board did not intend to permit general upgrade costs which are recovered under rate cap regulation or otherwise required by ONJ to be recovered in the EARC.

To do so would result in double recovery, would be inconsistent with N.J.A.C. 14:10-10.4. and would violate the FCC's rules.⁴⁴ Therefore, the Ratepayer Advocate recommends the elimination of all costs, resulting in a reduction in the EARC of \$474,378, related to Release 13 hardware.

Similarly, BA-NJ's recovery for advancement of investments, otherwise called "advancement costs" is not appropriate. Mirroring the FCC's rationale, no costs for the advancement of investment are appropriate and \$323,983 in costs should be eliminated. Because BA-NJ as failed to supply an allocation what are presubscription functions from non presubscription functions (See Section B above), BA-NJ has no support to justify its inclusion of memory upgrades cost. Lacking any other documentation or support, the Ratepayer Advocate recommends that the same 50% factor for reduction in software costs is appropriate to apply to hardware memory upgrades. As a result, the EARC costs should be revised as follows:

Item	Amount	Annual Costs
Hardware necessary to increase memory	\$1,321,686	
Release 13 for Siemens switches		
Sub-total	\$1,321,686	\$537,926
Release 13 investment		

⁴⁴ BA-NJ has made no showing that 100% of Siemens' Release 13 was necessary for presubscription implementation. Therefore, BA-NJ has failed to sustain its burden of proof to include these costs in the EARC. Using FCC's rationale for LNP and applying that rationale to the EARC, hardware associated with Release 13 for Siemens switches would have been installed when Release 14 was installed. The cost for Release 13 would not qualify as a direct incremental cost directly related to presubscription. It is a general upgrade cost.

advancement		
Total Hardware costs		\$537,926

BA-NJ also failed to credit increased revenues against the costs it sought to recoup. In determining the direct incremental cost for a specific EARC item, one must reduce the cost by any increase in revenues generated by the service offering. In this case, BA-NJ admits a revenue gain of \$419,000 for its call waiting deluxe service which was implemented as part of Siemens' Release 13. See Exhibit AT&T 13.

Issue: Cost of Money (See Attachment 6)

The Cost of Money used should not be the [Begin BA-NJ Proprietary] [End BA-NJ Proprietary] proposed by BA-NJ. It should be consistent with the 10.4% cost of money (based on 12% cost of equity and 8% cost of debt at a 60%/40% ratio respectively) established for unbundled elements (see MCI-5). This will reduce the amortization factor.

Issue: Six Month Free PIC Period Costs

The free PIC period established by the Board should be included as part of the EARC. If the free PIC is included in the EARC, the recoverable costs would increase by \$1,578,867. See Attachment 8, hereto.

The number of intraLATA PICs processed during 1997 (Exhibit AT&T-20) is adjusted based on the ratio of the initial six month period to the entire number of days intraLATA presubscription was available in 1997. The resulting number is multiplied times the incremental cost of \$1.44 (see RPA-9, Attachment 2). In accordance with the Board's order, it is appropriate to use only the direct incremental cost with no common costs or profits.

Source: AT&T 9				
Analysis of EARC recovery				
Start	End	MOU	Rate	Collected
05/05/97	04/30/98	8411000000	0.000545	\$4,583,995
05/01/98	06/30/98	1434183333	0.000545	\$781,630
07/01/98	01/31/99	5359316667	0.000361	\$1,934,713
Sub-Total				\$7,300,338
02/01/99	04/30/99	2458600000	0.000361	\$887,555
Sub-Total				\$8,187,893
		Years	Total TBC	
Original Ann.	**\$	5	\$12,744,028	
Revised Ann.	\$1,393,266	5	\$6,966,330	

****BA-NJ Proprietary**

Revised EARC

Attachment 2 hereto is the Ratepayer Advocate's revised EARC calculation. BA-NJ's modified EARC calculation as presented during the hearing is shown in Attachment 1 as a reference.

The impact of all of the adjustments discussed is the reduction of BA-NJ's EARC recovery charge from \$.000303 to \$.000166. Based on the revised EARC rate of \$.000166, it is estimated that BA-NJ will have recovered all of its EARC costs by the end of January 1999 based on the overstated EARC rates it has charged since the beginning of presubscription in New Jersey.

In summary, BA-NJ's calculations call for an annual recovery of **[Begin BA-NJ Proprietary]** **[End BA-NJ Proprietary]** which is a total recovery over a five year period, of \$12,744,026. Our revised calculation reduces the annual recovery to \$1,393,266 and

brings total recovery over the five year period to \$6,966,330. Based on the minutes of use (MOU) data provided in Exhibit AT&T-9 multiplied by the various BA-NJ's EARC rates charged to date, BA-NJ will have collected \$7,300,338 for the period ending in January 1999. The excess amounts collected should be refunded with interest to the IXCs or the IXCs should be permitted to reduce BA-NJ's access toll charges BA-NJ by that amount.

CONCLUSION

In view of the foregoing, the Ratepayer Advocate submits that BA-NJ has not sustained its burden of proof in this proceeding. The Ratepayer Advocate urges the ALJ to find that BA-NJ failed to provide current, complete, and accurate information in this proceeding. As a result, the Ratepayer Advocate respectfully requests that the ALJ finds:

- (1) BA-NJ has failed to meet its burden of proof regarding the appropriate PIC Charges for intraLATA toll presubscription in this proceeding.
- (2) BA-NJ cost study supporting its rates for PIC charges should be given no weight. Because the cost for making PIC changes is based upon triple hearsay, and not based upon competent evidence and otherwise violates the residuum rule.
- (3) PIC charges should be set no higher than the rates recommended by the Ratepayer Advocate in its prefiled direct testimony.
- (4) BA-NJ has failed to show that it is recovering only the direct incremental costs associated with implementation of intraLATA Toll presubscription.
- (5) BA-NJ has failed to provide sufficient information to thoroughly review and to analyze each rate element for which it seeks recovery under EARC; specifically BA-NJ has failed to support recovery in the amounts claimed for Network costs which include switch translation, and switch software costs; customer sales costs which include educational call costs, training costs, new method and procedures costs; project team costs; total one time costs; and annual investment costs.
- (6) BA-NJ is seeking to recover general upgrade costs, advancement costs and other incidental expenses not directly related to IntraLATA Toll presubscription.
- (7) The EARC should be revised to deduct costs associated with various adjustments

recommended by the Ratepayer Advocate.

- (8) If an annual true-up is required, such annual true-up shall be in accordance with AT&T's true-up proposal.
- (9) That BA-NJ must make refunds with interest to all customers who made PIC changes at the interim PIC rates.

Respectfully submitted,

BLOSSOM A. PERETZ,
RATEPAYER ADVOCATE
DIVISION OF THE RATEPAYER ADVOCATE

By: _____
Christopher J. White
Assistant Deputy Ratepayer Advocate

Source: AT&T 20					
intraLATA PIC changes procesed during 1997					1430923
interLATA PIC changes procesed during 1997					1780314
End date	Start date	no. of days			
12/31/97	05/05/97	240.00	days included during 1997		
11/05/97	05/05/97	184.00	Free PIC days		
Factor		0.7666667			
1997 intra PICs		1430923			
Est. Free PICs		1097041			
PIC cost		\$1.44	Attachment 2		
Free PIC cost		\$1,578,867			